

## REMARKS

### STATUS OF THE CLAIMS

Claims 2-4, 6-13, 16-27 and 29-33 are pending. Claims 19-27 have been cancelled without prejudice or disclaimer. Applicant reserves the right to pursue the subject matter of these claims in this or another application.

Claim 29 has been amended to recite a stationary cover that is stationary during mixer operation. Claim 31 has been similarly amended to recite a stationary cover that is stationary during mixer operation, while claim 33 has been amended to recite that the means for covering is stationary during mixer operation. Claim 6 has been amended to depend from claim 2 and to delete the recitation of “said” while claim 7 has also been amended to depend from claim 2. Claim 17 has been amended for purposes of clarity to recite the drive assembly in the preamble. Claim 32 has been amended to depend from claim 31.

Accordingly, no new matter has been added by these amendments and no estoppels are intended thereby. Reconsideration and withdrawal of the outstanding rejections is respectfully requested in view of the following remarks.

### OFFICE ACTION

#### CLAIM OBJECTIONS

Claim 32 is objected to as being a substantial duplicate of claim 30. As discussed above, claim 32 has been amended to depend from claim 31 rendering this objection moot. No further elaboration is believed necessary and withdrawal of this objection is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 112

Claims 6-13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection.

Claim 6 has been amended to depend from claim 2 and it has also been further amended to delete “said” and recite the diameter of the cover. As indicated by the *Listing of the Claims* section of this amendment, claim 7 has been amended to depend from claim 2. Accordingly, Applicant respectfully requests that this rejection to claims 6-13 be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 102(b)

(1) Claims 2, 3, 6-8, 10-13, 16-18 and 29-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Magnuson (U.S. Patent No. 3,055,237). Applicant respectfully traverses this rejection.

Applicant notes that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (quoting *Verdegall Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)).

Without conceding the propriety of the rejection, claims 29 and 31 have been amended to recite a stationary cover that remains stationary during operation, while claim 33 has been amended to recite that the means for covering that is stationary during mixer operation.

Turning to Magnuson, Magnuson fails to disclose at least these aspects of claims 29, 31 and 33. To the contrary, Magnuson clearly discloses a cover or winch drum 16 that is not stationary, but rotates between two standards 10, 11 during operation. Moreover, Magnuson recites that the winch drum 16 is received for *rotary* motion. See, for example, column 1, lines 60-68 of Magnuson.

Accordingly, for at least the aforementioned reasons, Applicant respectfully submits that Magnuson fails to anticipate claims 29, 31 and 33. Claims 2, 3, 6-8, 10-13 and 30 depend from claim 29, while claims 16-18 and 32 depend from claim 31. It is therefore respectfully submitted that these dependent claims are not anticipated by Magnuson for at least the same reasons discussed above.

Accordingly, Applicant respectfully requests that this 102(b) rejection to claims 2, 3, 6-8, 10-13, 16-18 and 29-33 be withdrawn.

REJECTIONS UNDER 35 U.S.C. § 103(a)

(1) Claims 4 and 9 stand rejected under 35 U.S.C. § 103 (a) as being allegedly unpatentable Magnuson U.S. Patent No. 3,055,237) alone, or the alternative in view of Kesig, *et al.* (U.S. Patent No. 5,735,603). Applicant respectfully traverses this rejection.

To establish a prima facie case of obviousness, the prior art references must teach or suggest all of the claim elements. M.P.E.P. § 2143. There must also be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references. *Id.* Applicant respectfully submits that these criteria for obviousness have not been satisfied.

As previously described in connection with the 102(b) rejections of the Office Action, claims 4 and 9 depend from claim 29 and therefore recite a stationary cover with a speed reducer disposed therein. Magnuson is completely silent with respect to these recited features. Kesig fails to remedy the aforementioned deficiency in Magnuson. Kesig simply discloses a method and apparatus for sealing a shaft.

Accordingly, because Magnuson and Kesig fail to teach or suggest the recited features of claims 4 and 9, this rejection should be withdrawn. However, even if, *arguendo*, Kesig did teach

or suggest the recited features, there is no motivation to modify Magnuson to arrive at an apparatus having a cover that is stationary during the operation of the apparatus. Magnuson clearly teaches away in disclosing that the winch drum 16 is received for *rotary* motion and would not be operable if it was stationary. Again, see, for example, column 1, lines 60-68 of Magnuson.

Accordingly, Applicant respectfully submits that a prima facie case of obviousness has not been established and withdrawal of this rejection is respectfully requested.

### CONCLUSION

Entry of the Amendment after Final Rejection is requested. The Amendment is believed to overcome the pending rejections. No substantial new matter is added and no new issues are believed to be raised. No additional claims are presented.

No extension-of-time fee or other fees are believed due. However any extension of time necessary to prevent abandonment is hereby requested, and any fee necessary for consideration of this response is hereby authorized to be charged to Deposit Account Number 50-2036.

In view of the foregoing, reconsideration and allowance of the application are believed in order, and such action is earnestly solicited.

Should the Examiner believe that a telephone conference would expedite issuance of the application, the Examiner is respectfully invited to telephone the undersigned attorney at 202/861-1714.

Respectfully submitted,

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